

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG**

WILLIAM ROPER, III,

Petitioner,

v.

**CIVIL ACTION NO.: 3:19-CV-131
(GROH)**

R. HUDGINS, Warden,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION

Pending before the Court is the Report and Recommendation (“R&R”) of United States Magistrate Judge Robert W. Trumble. ECF No. 7. Pursuant to this Court’s Local Rules, this action was referred to Magistrate Judge Trumble for submission of a proposed R&R. Magistrate Judge Trumble issued his R&R on August 13, 2019. Therein, Magistrate Judge Trumble recommends that the Petitioner’s § 2241 petition [ECF No. 1] be denied and dismissed without prejudice.

I. BACKGROUND

On August 12, 2019, the Petitioner filed a Petition for Habeas Corpus Pursuant to 28 U.S.C. § 2241. ECF No. 1. Therein, the Petitioner challenges his conviction and sentence, arguing that he “is actually innocent of violating the element ‘knowing’ in Sec. 922(g)(1)”. *Id.* at 1, 5. Specifically, the Petitioner avers that he “was never told in writing (after completing probation or parole), or orally by the Government, or the Court that he was a person barred from possessing a firearm.” ECF No. 1-1 at 2. He further alleges that there was judicial misconduct. The Petitioner requests that the Court vacate and remand for a correction of his sentence or vacate his conviction entirely. ECF No. 1 at

8.

II. LEGAL STANDARDS

Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. Thomas v. Arn, 474 U.S. 140, 150 (1985). Failure to file timely objections constitutes a waiver of *de novo* review and of a Petitioner's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); Snyder v. Ridenour, 889 F.2d 1363, 1366 (4th Cir. 1989); United States v. Schronce, 727 F.2d 91, 94 (4th Cir. 1984).

Objections to Magistrate Judge Trumble's R&R were due within fourteen plus three days of the Petitioner being served with a copy of the same. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). The R&R was mailed to the Petitioner by certified mail on August 13, 2019. ECF No. 7. The Petitioner accepted service on August 16, 2019. ECF No. 9. The Petitioner filed objections on August 23, 2019. ECF No. 10. Having timely filed his objections, this Court will review the Petitioner's objections to the R&R *de novo*. The Court will review the remainder of the R&R for clear error.

III. DISCUSSION

In his R&R, Magistrate Judge Trumble recommends that the § 2241 petition be denied and dismissed without prejudice because the Court lacks jurisdiction. Specifically, the Petitioner's motion to vacate pursuant to 28 U.S.C. § 2255, where he seeks vacation of his conviction and sentence, is still pending in the United States District

Court for the Central District of Illinois. The Petitioner is seeking the same relief in both proceedings, and the relief is more appropriately considered in the district where he was convicted.

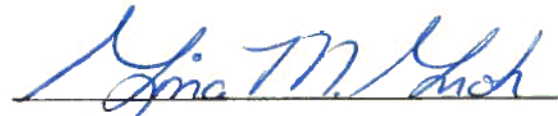
In the Petitioner's objections, he asserts that he filed a motion to withdraw his motion to vacate in the Central District of Illinois. ECF No. 10 at 2. The Petitioner further avers that a § 2255 motion is inadequate and ineffective to address his issues. Id. Upon review of the Petitioner's motion to vacate in the Central District of Illinois, Case Number 2:19-cv-2217, the Petitioner did file a motion to withdraw on August 26, 2019. However, his motion to vacate remains pending in the Central District of Illinois. Accordingly, the Petitioner's objection is **OVERRULED** because the relief he is seeking is more appropriately considered in his motion to vacate currently pending in the Central District of Illinois.

IV. CONCLUSION

Accordingly, upon careful review of the R&R and the Petitioner's objections, it is the opinion of this Court that Magistrate Judge Trumble's Report and Recommendation [ECF No. 7] should be, and is hereby, **ORDERED ADOPTED** for the reasons more fully stated therein. The Petitioner's § 2241 Petition [ECF No. 1] is **DENIED** and **DISMISSED WITHOUT PREJUDICE**.

The Clerk is **DIRECTED** to strike this matter from the Court's active docket. The Clerk is further **DIRECTED** to transmit copies of this Order to all counsel of record herein and to mail a copy of this Order to the pro se Petitioner by certified mail, return receipt requested, at his last known address as reflected on the docket sheet.

DATED: October 24, 2019


GINA M. GROH
CHIEF UNITED STATES DISTRICT JUDGE